No. 05-354

In The

Supreme Court of the United States

CITY OF COLUMBUS, et al.,

Petitioners,

v.

HAZEL GOLDEN,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a municipality's termination of water service to a current tenant and its refusal to permit that tenant to contract for water service, because of the failure of the prior tenant or the landlord to pay an outstanding water bill, violate the Fourteenth Amendment rights of the current tenant who did not incur the arrearage.[1]

[1] Petitioners frame the question, "Whether the government's termination of water service to a rental property based on the landlord's failure to pay the unit's outstanding utility bill violates the equal protection rights of a current tenant who did not incur the arrearage."

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STATEMENT

Respondent Hazel Golden is a former tenant of a rental house in Columbus, Ohio. Unknown to Ms. Golden, at the time she moved into the house, there was an outstanding balance on the water bill for the premises incurred by a prior tenant which neither the prior tenant nor the landlord had paid. According to the City of Columbus City Code, "owners of real estate premises installing or maintaining water service shall be liable for all water charges incurred for service at said premises." City of Columbus Code 1105.045(C). When the landlord failed to abide by City Code and pay the bill, the City terminated water service to the house without providing Ms. Golden with notice or an opportunity to be heard. Service was resumed on several occasions at the request of the City's code enforcement department, but turned off again when the landlord continued to fail to pay the outstanding water bill.

During this time, Ms. Golden attempted to obtain water service in her name. As a tenant, the only method by which Ms. Golden could open an account in her name was under a "direct billing agreement."[2] Ms. Golden submitted a "direct billing agreement" but received no response. In any event, because there was a pending arrearage by the former tenant, Ms. Golden did not qualify for a direct billing arrangement under the code. *See* City of Columbus Code 1105.045(E). Ultimately, she vacated the premises.

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[2] The City permitted tenants to have accounts in their names in limited circumstances if the landlord agreed to such an arrangement via a direct billing agreement. *See* City of Columbus Code 1105.045(E).

On July 25, 2001, Ms. Golden filed suit in the Southern District of Ohio, alleging among other things that petitioners violated her right to equal protection and due process of law by terminating water service to her rental unit based on a debt for which she was not responsible without notice and an opportunity to be heard, and by refusing to allow her to establish water service in her name. On June 6, 2002, the district court dismissed her equal protection and due process claims.

With respect to equal protection, the district court rejected Ms. Golden's assertion that water is a fundamental right requiring the City to have a compelling reason for treating landowners and non-landowners differently. Instead, the district court applied rational basis review finding that the City's policy affected only economic interests rather than fundamental constitutional rights. The district court then held that the City's policy was a rational means of ensuring payment of water bills.

With respect to due process, the district court found that tenants do not have a protected property interest in the right to water service for purposes of due process and, as such, dismissed Ms. Golden's due process claim.

On appeal, the Sixth Circuit reversed the district court's dismissal of Ms. Golden's equal protection claim but upheld the dismissal of her due process claim. With respect to equal protection, the court of appeals agreed with the district court that rational basis scrutiny applied to Ms. Golden's claims; however, it disagreed with the district court's determination that the City's policy was rational. Instead, the court concluded that the City's policy "divides tenants in an irrational manner because it denies water service only to those tenants whose predecessors or

landlords failed to pay the water bills."[2] The court explained that this conclusion was compelled by its prior decision in *Craft v. Memphis Light, Gas & Water Div.*, 534 F.2d 684 (CA6 1976), *aff'd*, 436 U.S. 1 (1978), which in turn adopted the reasoning of the Fifth Circuit's decision in *Davis v. Weir*, 497 F.2d 139 (1974). The court in *Davis* held unconstitutional a similar policy, reasoning that "[t]he City has no valid governmental interest in securing revenue from innocent applicants who are forced to honor the obligations of another or face constructive eviction from their homes for lack of an essential to existence – water." *Id.* at 145. Because the court in *Davis* construed such policies as an illegitimate attempt to extract payment from the new tenant, it held that scheme was "devoid of logical relation to the collection of unpaid water bills from the defaulting debtor." *Id.* at 144-45.

With respect to due process, the court noted that Ms. Golden failed to cite to Ohio's Landlord Tenant Act as a potential source of property rights for purposes of due process. The court noted that, "other circuits have held that certain provisions common to landlord-tenant statutes to be sufficient for this purpose," citing the Eleventh Circuit cases of *James v. City of St. Petersburg*, 33 F.3d 1304, 1306-07 (CA11 1994) (*en banc*); *DiMassimo v. Clearwater*, 805 F.2d 1536, 1539-40 (CA11 1986), and the Ninth Circuit case of *Turpen v. City of Corvallis*, 26 F.3d 978, 979 (CA9), *cert. denied*, 513 U.S. 963 (1994). The court did not

[2] The Sixth Circuit understood that the classification for purposes of equal protection was between two classes of tenants as opposed to the district court's conclusion that the classification was between landowners and tenants.

express an opinion as to whether these precedents would have weighed in Ms. Golden's favor and determined that Ms. Golden did not demonstrate that she had a cognizable property interest in continued water service.[4] The Sixth Circuit therefore affirmed the district court's dismissal of Ms. Golden's due process claim, which is not an issue in the current Petition.[5]

This timely Petition for Writ of Certiorari was filed September 15, 2005.

SUMMARY OF THE ARGUMENT

First, the circuit courts are not "deeply divided" over whether the Equal Protection Clause permits a city to terminate utility service to a rental property when the current tenant is not responsible for the debt. The only case cited by petitioners to make an equal protection decision contrary to the one in *Golden* is a 1988 Third Circuit decision. *See Ransom v. Marrazzo*, 848 F.2d 398, 414 (CA3 1988). More important, that case may not truly represent a split of authority because it can be factually distinguishable as the *Ransom* plaintiffs were "non-tenants."

[4] Since the time of the Sixth Circuit's decision in *Golden*, that court has had an opportunity to determine the question of whether Ohio's Landlord Tenant Act creates in a tenant a property interest to continued water service. *See Midkiff v. Adams Cty. Regional Water Dist.*, 409 F.3d 758 (CA6 2005), *reh'g and reh'g en banc denied*, 2005 U.S. App. LEXIS 19254 (CA6 Aug. 30, 2005). The court answered that question in the negative.

[5] The court of appeals also upheld the district court's dismissal of respondent's Equal Credit Opportunity Act claims and its denial of class certification.

The case cited by petitioners that allegedly demonstrates a conflict between *Golden* and the state courts of Ohio is also off the mark. *See Morrical v. Village of New Miami*, 476 N.E.2d 378 (Ohio Ct. App. 1984). That case is not from Ohio's highest court and, in any event, deals with the issue of whether a landlord can be held responsible for the debts of a tenant, which, as stated, *infra*, is not the issue before this Court.

Second, petitioners confuse the issue to overstate and misstate the effect of the *Golden* decision on "the financial stability of tens of thousands of municipal utilities." Pet. Br. 10. Petitioners' argument suggests that the *Golden* decision affects a municipality's ability to hold a property owner responsible for a delinquent tenant's bill. That is not true, as many municipal utilities in Ohio and elsewhere address the concern of delinquent tenants by holding a landlord ultimately responsible for payment. This practice has been held to be rational and legal. *See Mansfield Apt. Owners Assoc. v. City of Mansfield*, 988 F.2d 1469, 1478 (CA6 1993). *Golden* does not affect that practice but instead deals with the very different question of the constitutional rights of tenants who are denied water service.

Next, the *Golden* decision is not a "substantial departure" from this Court's equal protection precedents. The *Golden* court used rational basis scrutiny, the least deferential level of scrutiny, which is hardly a substantial departure from this Court's long line of equal protection precedent.

Finally, the present case is not the proper vehicle for resolution of any of the issues raised by petitioners. Petitioners present an equal protection argument only; however, the issues raised by the denial of utility service

to tenants involve both the Equal Protection Clause *and* the Due Process Clause. It would be confusing and a waste of judicial resources for this Court to decide only the equal protection issue.

REASONS FOR DENYING THE WRIT

I. The Circuit Courts Are Not "Deeply Divided" Over Whether The Equal Protection Clause Permits A Municipality to Terminate Utility Service To A Rental Property When The Current Tenant Is Not Responsible For The Debt.

A. This issue does not necessarily present a true question of law warranting review by this Court.

Petitioners refer to a recurring conflict among the federal courts of appeals; however, this "conflict" may hinge on factual distinctions rather than a true question of law signifying a split among the circuits. The only case cited by petitioners to hold contrary to the equal protection holding in *Golden* was decided by the Third Circuit over seventeen years ago. *See Ransom v. Marrazzo*, 848 F.2d 393, 412-13 (CA3 1988). That case may not present a true split in the law of equal protection because it's factually distinguishable from *Golden* and its predecessors.[6] The plaintiffs in *Ransom* cannot be compared to those in *Golden* or its predecessors because the plaintiffs in *Ransom* were "non-tenants." *Id.* at 401. The *Ransom* court

[6] *Davis v. Weir*, 497 F.2d 139 (CA5 1974); *Sterling v. Village of Maywood*, 579 F.2d 1350 (CA7 1978), *cert. denied*, 440 U.S. 913 (1979); *O'Neal v. City of Seattle*, 66 F.3d 1064 (CA9 1995).

specifically noted this fact stating, "Thus, *we do not reach* the question of whether the asymmetries in the landlord-tenant relationship introduce an added constitutional dimension to the propriety of denying service to *non-delinquent tenants*." *Id.* at 402 n.1 (emphasis added).[7] As such, *Ransom* acknowledges that it does not address the issue presented by *Golden* and may indicate that there is *not* a split of authority that is ripe for this Court's consideration.[8]

Another good example of factual distinction that can obscure the legal issues raised by petitioners is illustrated by the Sixth Circuit's decision in *Midkiff v. Adams Cty. Regional Water Dist.*, 409 F.3d 758 (CA6 2005), *reh'g and reh'g en banc denied*, 2005 U.S. App. LEXIS 19254 (CA6 Aug. 30, 2005).[9] The Sixth Circuit decided *Midkiff* shortly after it decided *Golden*, but found there was no equal protection violation in *Midkiff*, despite the fact that *Midkiff* involved a municipality's shut-off of a tenant's water service based on the debts of past tenants. The Sixth Circuit found that unlike in *Golden*, in which the court

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[7] The Ninth Circuit recognized this distinction, but nonetheless chose to distinguish *Ransom* on its merits. *See O'Neal v. City of Seattle*, 66 F.3d 1064, 1068 n.3 (CA9 1995). ("Although the *Ransom* court may have intended to limit the scope of its opinion, its substantive discussion of the landlord-tenant cases is, at a minimum, instructive. We therefore discuss its analysis without attempting to distinguish the case on landlord-tenant grounds.")

[8] Petitions for Writs of Certiorari have been denied in similar cases twice. *See Turpen v. City of Corvallis*, 26 F.3d 978, 979 (CA9), *cert. denied*, 513 U.S. 963 (1994); *Sterling v. Village of Maywood*, 579 F.2d 1350 (CA7 1978), *cert. denied*, 440 U.S. 913 (1979).

[9] *See also DiMassimo v. City of Clearwater*, 805 F.2d 1536, 1541 (CA11 1986) (finding no equal protection violation because the classification in that case was between landlords and tenants rather than two different classifications of tenants).

compared different classifications of tenants for purposes of equal protection, the only classification set forth in *Midkiff* was between landlords and tenants, two groups that are not similarly situated for equal protection purposes. The Sixth Circuit narrowly construed *Golden*; it distinguished *Golden* not by a different interpretation of equal protection law, but by different factual circumstances in the case.

B. Petitioners' allegation that the *Golden* case is in conflict with Ohio state law is wrong.

Petitioners further argue that the *Golden* decision conflicts with the law of Ohio, citing to *Morrical v. Village of New Miami*, 476 N.E.2d 378 (Ohio Ct. App. 1984). Again, Petitioners confuse the issues presented by *Golden*. The *Morrical* case holds:

> A municipal ordinance which imposes liability on a property owner for water services provided to a tenant on the premises does not violate either the Due Process or Equal Protection Clauses of either the state or federal Constitutions.

Id. at syllabus ¶ 1. The holding of that case therefore deals with the liability of property owners, which is not at issue in the *Golden* decision.[10] No matter what the outcome of *Golden*, municipalities always have the right to collect utility debts from the owner of the property on which the debt was incurred. *See, e.g., Mansfield Apt. Owners Assoc. v. City of Mansfield*, 988 F.2d 1469, 1478 (CA6 1993).

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[10] *See* further discussion in Section II.

II. Petitioners Wrongly Allege That The *Golden* Decision Prevents Landlords From Being Held Responsible For Tenants' Bills.

The purportedly great economic effect of this decision alleged by petitioners comes from petitioners' misstated argument regarding the effect of the *Golden* decision. Petitioners go on at length about the importance of holding landowners ultimately responsible for the debts of their tenants. However, the *Golden* decision has no effect on this practice.

Petitioners contend that the *Golden* decision[11] "prohibits a municipality from making landlords responsible for the payment of utility bills for their rental properties and terminating service to the property if the bill is not paid and the tenant living in the unit at the time of termination is not responsible for the arrearage." Pet. Br. 5.

Petitioners' argument and language suggest to this Court that these decisions prohibit a municipality from holding landlords responsible for payment of utility bills for their rental properties. This is simply not true. It is well established that a municipality does not violate the constitution by holding a landlord liable for utility debts incurred on his or her property. *See Mansfield Apt. Owners Assoc.*, 988 F.2d at 1478. Instead, the effect of *Golden* and its predecessors is to prohibit one means of *enforcement* of a municipality's right to collect from a landlord when that

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[11] As well as the decisions in *Davis v. Weir*, 497 F.2d 139 (CA5 1974); *Sterling v. Village of Maywood*, 579 F.2d 1350 (CA7 1978), *cert. denied*, 440 U.S. 913 (1979); and *O'Neal v. City of Seattle*, 66 F.3d 1064 (CA9 1995).

enforcement violates the constitutional rights of an innocent, subsequent tenant.

Petitioners attempt to commingle and confuse these two separate issues in an effort to make unconstitutional policies appear "rational." Again and again in their argument, petitioners refer to the right to "hold landlords responsible for utility bills on their rental properties and to terminate service for nonpayment." *That is not the issue presented.* The issue is whether a municipality can deny water service to tenants and terminate water service to a tenant based on the bill of a third party, because the municipality wants a method of enforcement to strong arm landlords into paying bills for delinquent tenants who have since moved off the property. *Regardless of the answer to that question, the municipality always has the right to hold the landlord responsible for the debt.*

In sum, petitioners' argument regarding the great economic effect of the *Golden* decision is exaggerated and overstated. Municipalities will continue to have the right to hold landlords responsible for utility debts incurred on their property regardless of the *Golden* decision.

III. The *Golden* Court Used Rational Basis Review – The Least Deferential Level Of Scrutiny – In Its Equal Protection Analysis And, Therefore, Did Not Substantially Depart From This Court's Precedent.

Petitioners claim that the decision in *Golden* is a substantial departure from "the deferential standard of review required for ordinary economic legislation." It is somewhat puzzling that petitioners raise the issue of the standard of review used for equal protection review or

suggest there is a conflict about that standard when there has never been an argument nor a difference among the courts regarding that issue. Respondent conceded to the Sixth Circuit that rational basis review was the appropriate standard, and that court applied rational basis review, the least deferential standard.

The *Golden* court found, as did the Ninth Circuit in *O'Neal*, "pursuing payment from the prior tenant and the landlord would be rationally related to the City's goal; refusing service to an unobligated new tenant would not." *Golden*, 404 F.3d at 962 (*quoting O'Neal*, 66 F.3d at 1068). The *Golden* court got it right. Petitioners' argument to the contrary is again based on their flawed premise that the only way to hold the landlord responsible for the debts of tenants – their economic rationality argument – is to withhold service from landlords for nonpayment, no matter what the consequences are to innocent subsequent tenants. The *Golden* court carefully analyzed the situation using the proper standard of review. This is hardly a substantial departure from precedent warranting oversight from this Court.

IV. The Present Case Is Not The Proper Vehicle For Resolution Of Any Of The Issues Raised By Petitioners.

A. This case fails to raise due process issues, a critical part of the analysis in every case that has addressed this issue.

This case is not the proper vehicle for resolution for any of the issues raised by petitioners. In the present case,

petitioners do not raise a due process argument because the *Golden* court agreed with their position on due process.[12] However, every single case cited by petitioners that has considered the equal protection argument has also considered the corresponding due process issue. If this Court is going to resolve the Fourteenth Amendment questions resulting from this issue, it should consider the issue fully and determine both the due process and equal protection arguments in a case that presents both arguments. It would be a waste of judicial resources for this Court to resolve only a portion of this issue.

B. This case fails to raise a fundamental question: whether tenants have a protected property right to continued water service.

For purposes of due process, a fundamental issue that is raised by the case law in this area – but not at issue in the Petition – is whether tenants have a protected property interest in continued water service. This is a fundamental question that should be answered by this Court in any analysis of the rights of tenants with respect to water service.

Several circuit courts have found a source of such a property interest to exist in state landlord-tenant statutes. *See, e.g., James v. City of St. Petersburg*, 33 F.3d 1304, 1306-07 (CA11 1994) (*en banc*); *DiMassimo v. Clearwater*, 805 F.2d 1536, 1539-40 (CA11 1986); *Turpen v. City of Corvallis*, 26 F.3d 978, 979 (CA9), *cert. denied*, 513 U.S. 963 (1994). Unfortunately, the issue of the Ohio landlord-tenant

[12] Respondent chose not to cross petition because she failed to raise Ohio's Landlord-Tenant statutes in the lower court, as more fully explained in Sec. IV, Part B.

statutes was not raised in the *Golden* case, as noted by the Sixth Circuit, "[w]e express no opinion as to whether these precedents weigh in Golden's favor because Golden does not rely upon any provision of Ohio's landlord-tenant law in this appeal." *Golden*, 404 F.3d at 958. However, after *Golden*, the Sixth Circuit found that Ohio's landlord-tenant statutes do not confer a property interest to tenants in continued water service. *See Midkiff v. Adams Cty. Regional Water Dist.*, 409 F.3d 758, 765 (CA6 2005), *reh'g and reh'g en banc denied*, 2005 U.S. App. LEXIS 19254 (CA6 Aug. 30, 2005). If there is any disagreement among the circuits, it is regarding that question which cannot be resolved by the *Golden* case.

Accordingly, state landlord-tenant statutes are not at issue in *Golden* and, therefore, *Golden* is not the proper case for this Court to resolve the due process issues nor the greater Fourteenth Amendment issues.

CONCLUSION

For all the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT BRIEF OF *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTERESTS OF *AMICI CURIAE*[1]

Springfield

The City of Springfield, Ohio ("Springfield") operates a municipal water utility providing services to customers within its corporate boundaries and beyond. Springfield's municipal water utility ordinances require the City Manager to charge, assess and collect charges for water services from property owners. Those ordinances do not provide for charging, assessing or collecting charges for water services from tenants. The Springfield municipal water utility ordinances also authorize the termination of water services if the water bill is not paid. Resumption of water service is conditioned upon the payment of all charges and fees due. Termination of water services for non-payment of water bills has been an effective method to enforce the collection of revenue to which Springfield is entitled for services rendered. As a practical matter, Springfield's policy for billing and collecting water utility charges related to residential rental properties is equivalent to that of the City of Columbus.

The 6th Circuit Court of Appeals decision in *Golden v. City of Columbus* will effectively prevent the use of this collection method when property owners succeed in renting units to new tenants before past due water bills are paid. The consequence will be elevated costs to the municipal utility in the form of increased uncollected receivables and the increased costs and personnel time associated with collection litigation

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[1]No person, other than *amici* and their counsel, participated in the writing of this brief or made any financial contribution to the brief.

against delinquent property owners – all to the prejudice of utility rate payers. Further, the additional collection litigation against delinquent property owners will add a significant burden to the local courts - to the prejudice of the community as a whole.

Cincinnati

The City of Cincinnati, Ohio ("Cincinnati") operates a municipal water utility providing services to customers within its corporate boundaries and beyond. Cincinnati's municipal water utility ordinances require the Director of the water utility to charge, assess and collect charges for water services from property owners. Those ordinances do not provide for charging, assessing or collecting charges for water services from tenants.

The Cincinnati municipal water utility ordinances also authorize the termination of water services if the water bill is not paid. Resumption of water service is conditioned upon the payment of all past due charges or such other payment arrangements as may be agreed upon by the utility and the property owner. Payment arrangements are not made directly with a non-owner.

As a practical business process, and courtesy to property owners, Cincinnati will send a duplicate copy of the billing statement to a third party and accept payment from same. The Ohio Revised Code provides for rent escrows to assist tenants whose landlords are not fulfilling the terms of lease agreements or maintaining properties according to certain standards. Additionally, the Cincinnati Municipal Code of Ordinances (ref. Section 401-93-A(e)) provides for tenants to make payment on past due balances to

prevent disconnection of services, or to effect reconnection of services, on behalf of the property owner, and to deduct such payments from rents owed the property owner without the need to set up escrow.

Termination of water services for non-payment of water bills has been an effective method to enforce the collection of revenue to which the Cincinnati is entitled for services rendered.

As a practical matter, Cincinnati's policy for billing and collecting water utility charges related to residential rental properties is similar to that of the City of Columbus. One clear exception is that Cincinnati maintains no direct tenant relationship, requiring the property owner's name on all accounts. Tenant occupied properties are served written notice at least 7 days prior to disconnection. The notice explains tenant rights and the Cincinnati Call Center maintains a referral list of agencies that will assist them.

Cincinnati joins Springfield in its assessment of the effect of the *Golden* case upon collection practices, increased costs of collection and the adverse impact on the local courts.

Akron

The City of Akron, Ohio ("Akron") operates a municipal water works utility providing services to customers within its corporate boundaries and beyond. Akron's Water Works Rules and Regulations require all contracts for water service be between Akron and property owners. The Rules and Regulations also authorize the termination of water services if the water bill is not paid.[2] Resumption of water service is

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[2] The practice of terminating water service to rental properties

conditioned upon the payment of all charges and fees due. Akron permits property owners to make payment arrangements on delinquent utilities billings.

Only property owners may enter into payment arrangements and contract for service. Payments may be accepted from third parties, including tenants and land contract buyers. However, the property owner is ultimately responsible for all billings. As a courtesy, billings will also be mailed to third parties if requested by a property owner. Land contract buyers are also permitted to act as agents for the property owners with the property owner's written consent and ultimate responsibility

Termination of water services for non-payment of water bills has been an effective method to enforce the collection of revenue to which Akron is entitled for services rendered. As a practical matter, Akron's policy for billing and collecting water utility charges related to rental properties is similar to that of the City of Columbus.

Akron joins Springfield and Cincinnati in their analysis of the effect of *Golden v. City of Columbus* on Akron's water service. The case will effectively prevent the use of a rational collection method when property owners succeed in renting units to new tenants before past due water bills are paid. The consequence will be elevated costs to the municipal utility in the form of increased uncollected receivables and the increased costs and personnel time associated with collection litigation against delinquent property owners – all to the prejudice of utility rate payers. Further, the additional collection litigation against delinquent property owners will add a significant

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has been suspended by Akron during the pendency of this case.

burden to the local courts – to the prejudice of the community as a whole.

The Ohio Municipal League

The Ohio Municipal League ("League") is an Ohio non-profit corporation whose membership includes over 750 cities and villages in the State of Ohio. When issues relating to an Ohio municipality's lawful authority are raised in litigation, the League frequently advocates for such authority as an *amicus* on behalf of the municipality.

The League seeks to amplify the positions of Cincinnati, Springfield and Akron: the Sixth Circuit Court of Appeals' decision is of state-wide importance in Ohio, and Ohio municipal utilities will suffer an adverse impact if the improper decision is permitted to remain the law of the Sixth Circuit.

Because of Article XVIII of Ohio's constitution, which grants broad home rule powers to municipalities, there are an indefinite number of methods by which Ohio municipalities may seek to ensure that municipal utility bills are paid. The League asserts that as long as any method of collection is undergirded by a rational basis, as the Columbus policy is, such method ought to be permitted under the Fourteenth Amendment to the United States Constitution.

INTRODUCTION: SUMMARY OF ARGUMENT

Cincinnati, Springfield, Akron and the League ("*Amici*") believe that the arguments of the City of Columbus in support of the petition are compelling. Those arguments will not be repeated at length herein. The *Amici* write in order to emphasize the importance of this case in Ohio, and to the *Amici* municipalities which run utility systems (see **Interests of *Amici Curiae***, above).

Since 1912, municipalities in Ohio have had the constitutional authority to acquire and operate public utilities. This indicates the importance the people of Ohio have placed on having reliable municipal utility services.

Numerous municipal utilities across Ohio, including those operated by the *Amici* municipalities, have policies which are similar to those of Columbus. These policies allow for the termination of water service to a property when a bill is delinquent. As a consequence of the Sixth Circuit's ruling, these municipal utilities have been denied an extremely effective tool for the prompt collection of delinquent water bills when a property owner succeeds in leasing a property before the delinquent bill is paid. This tool helps to ensure the efficient collection of revenues which are sufficient to pay for current operational expenses and debt service.

Additionally, persons who rent from landlords who have delinquent debt are not similarly situated, under Ohio property law, to those persons who rent from landlords who are not delinquent on their debt. Consequently, the policy of the City of Columbus does

not violate the Equal Protection Clause of the Fourteenth Amendment.

The *Amici* urge this honorable court to take this case and resolve the conflict which has developed between the Federal Circuit Courts of Appeal. Of particular significance to Ohio's municipalities: the Sixth Circuit's decision under the Fourteenth Amendment conflicts with an Ohio court's analysis of the Equal Protection issue, and this conflict should be resolved by this court.

ARGUMENT

Amici concur with the legal arguments made by the Petitioners and will not restate them, in full, here. S.Ct. Rule 37.1 ("An *amicus curiae* brief that brings to the attention of the Court relevant matters not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored.")

Instead, *Amici* will explain why this case is of importance to Ohio municipalities. *Amici* will also, briefly, discuss why a tenant who moves into a property which is burdened by a delinquent debt is not similarly situated, as a matter of law, to the tenant who moves into a property which is not so burdened.

THE IMPORTANCE OF THIS CASE

The Ohio Constitution

On September 3, 1912, the people of the State of Ohio gave Ohio municipalities the constitutional right to operate public utilities. Article XVIII, Section 4 of the Ohio Constitution provides:

> Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility.

Rather than rely on the legislative authority of the state to grant the power to municipalities to operate public utilities, the people of Ohio determined that municipal public utilities were a matter of such importance that they warranted a place in the constitution. *Village of Lucas v. Lucas Local School District*, 2 Ohio St.3d 13, 442 N.E.2d 449 (1982).

The importance of municipal utility powers to the people of Ohio has not changed since 1912.

Collections

It is reasonable to assume that the people of Ohio, in providing constitutional authority to municipalities to construct, acquire and operate municipal utilities, wanted those utilities to function properly. They wanted the municipal utilities to deliver the municipal utility service, expand capacity as the service territory grew, and collect rates and fees which were sufficient to finance capital costs and pay current expenses.

In performing the functions expected of them by the people of Ohio, municipalities have found that a policy of making property owners responsible for utility charges is far more practical than merely holding tenants in possession of the property responsible. There are several obvious reasons for these policies. Tenants are, frequently, transient making collection problematic. *City of Canton v. Canton Realty & Dev.*, 1999 Ohio App. LEXIS 2791, at *11. Additionally, the landlord can adjust the rent to cover utility charges. *Id.* There is also the ability to place delinquent water charges on the tax list and duplicate, to be collected as a tax. Ohio Revised Code Section 743.04(A) This filing also serves as a lien on property to which the service has been rendered, ensuring that payment of the delinquent charges is made to the municipality at the time the property is transferred. *Id.*

The policy of holding the property owner responsible for the consumption of utility service by occupants of the served property has been repeatedly upheld by the Ohio courts. *Pfau v. City of Cincinnati*, 142 Ohio St. 101, 50 N.E.2d 172 (1943); *Morrical v. Village of New Miami*, 16 Ohio App. 3d 439, 476 N.E.2d 378 (1984); *City of Bucyrus v. Sears*, 34 Ohio App. 450,